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असाधारण

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PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

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NEW DELHI, FRIDAY, FEBRUARY 8, 2013/MAGHA 19, 1934

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 17 जनवरी, 2013

आ.अ. 7(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ए) के अनुसरण में निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 7 में मद्रास उच्च न्यायालय के तारीख 20-7-2011 के आदेश को इसके द्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/त.ना.-लो.स./7/2009/2013]

आदेश से,

आर. के. श्रीवासतव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 17th January, 2013

O.N. 7(E).—In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Madras dated 20-7-2011 in Election Petition No. 7 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 20TH DAY OF SEPTEMBER 2011

THE HON'BLE Ms. JUSTICE K. SUGUNA

Election Petition No. 7 of 2009

and

A.Nos. 1072 to 1074 of 2010

**ELP. No. 7 of 2009**

S. Isaac Jebakumar  
S/o. Selvadurai  
No.121, Ward 3, Andersonpettai,  
Ammanoor - 631 002, Vellore District.

... Petitioner

-VS-

1. S. Jagathrakshakan  
S/o. K. Swamikannu Gounder,  
No.1, First Main Road,  
Kasturibai Nagar, Adyar,  
Chennai - 600 020.
2. M. Mary John  
S/o. S. Mariasoosai  
No.29, Rose Nagar Main Road,  
Medavakkam Main Road,  
Kovilampakkam, Chennai - 600 117.
3. R. Velu  
S/o. V. Rangasamy  
No.30, Co-operative Colony,  
Sri Ram Nagar, Alwarpettai,  
Chennai - 600 018.
4. S.C. Annamalai  
S/o. S.K. Chokkalingam  
130, Vallalar Illam, Nadu Street,  
Podatturpettai - 631 208.
5. S. Sankar  
S/o. A. Sundaram  
12, Kalaignar High Road,  
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Chennai - 600 063.
6. K. Shanmugham  
S/o. Kandasamy  
2/155, Kizhandai Street,  
Poottuthakku - 632 517.
7. K. Seenivasan  
S/o. C.K. Kannappan  
No.25, Kasinathapuram,

- Pattabiramapuram - 631 209.
8. W.B. Palani  
S/o. W.T. Balakantha  
Old No.9/2, New No.12, XI Avenue,  
Harrinton Road,  
Shenoy Nagar, Chennai - 600 030.
  9. Ta.V.Passamighuannan Venkatesnor  
S/o. Venkatachalam  
13, East Mada Street,  
Thiruvathipuram - 604 407.
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  13. D. Panjatsaram  
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Sholinghur - 631 102.
  14. E.Pandian  
S/o. Elumalai  
No.10, Nattanmai Raji Street,  
Arcot - 632 503, Vellore District.
  15. M. Muthiyalu  
S/o. Moorthi Naidu  
13/2, Easwaran Koil street,  
Thandalam, Krishnapuram Via,  
Gandhi Nagar, Vellore - 632 006.
  16. N.D. Mathew  
S/o N. David  
No.301, Sahaya Mada Street,  
Uriturkuppam, Thakkolam - 631 151.
  17. J. Janakiraman  
S/o. N. Jeayaraman  
7/34, Ammur Road, Ranipet - 632 401.  
Vellore District.
  18. J. Jegatheeswaran  
S/o. A.N. Jeyaraman  
24/26, Nattanmai Raji Street,  
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  19. S. Jegan  
S/o. A.P. Sagadev  
16/11, Councillor A.L. Devan Street,  
Arcot - 632 503, Vellore District.
  20. The Returning Officer

- No.7, Arakkonam Parliamentary Constituency,  
Additional District Collector (Revenue)  
Vellore District, Vellore - 632 509.
21. The Chief Election Commissioner  
Nirvachan Sadan, Ashoka Road,  
New Delhi - 110 001.
22. The Chief Electoral Officer (CEO)  
Fort St.George, Chennai - 9.

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OA.Nos. 1072 to 1074 of 2010

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S/o. C.K. Kannappan  
No.25, Kasinathapuram,  
Pattabiramapuram - 631 209.
8. W.B. Palani

... Respondent /  
Election Petitioner

- S/o. W.T. Balakantha  
Old No.9/2, New No.12, XI Avenue,  
Harrinton Road,  
Shenoy Nagar, Chennai - 600 030.
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20. The Returning Officer  
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Additional District Collector (Revenue)✓

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- Vellore District, Vellore - 632 509.
21. The Chief Election Commissioner  
Nirvachan Sadan, Ashoka Road,  
New Delhi - 110 001.
22. The Chief Electoral Officer (CEO)  
Fort St. George, Chennai - 9.
- ... Respondents

OA.No. 1072 of 2011

This Application praying that this Hon'ble Court be pleased to take up the following issues as a preliminary issue viz.,

(a) Whether the pleadings in the Election Petition mentioned in Paragraph 17 in this affidavit are liable to be struck off from the Election Petition.

(b) Whether the Election Petition is maintainable under Section 80 and 86 R/w. Sec 100(1)(d)(iii)&(iv) of R.P. Act for want of, cause of action, triable issue and in the absence of clear pleadings, material facts and material particulars in the Election Petition as to how the alleged wrong display of the First Respondent / Election Petitioner's Symbol "Battery Torch" as "Table Lamp" in the copy of the list of contesting candidates displayed outside a polling booth had materially affected the election result in so far as it concerns the returned candidate.

(c) Whether the prayer in the Election Petition to declare the Election Petitioner as the returned candidate duly elected to NO.7, Arakonam Parliamentary Constituency in the absence of pleadings with material facts and particulars to satisfy the requirement of Section 101 of Representation of People Act, 1951 is maintainable.

(d) In the event of the findings on all or any of the preliminary issues (a), (b) and (c) above being in the negative this Hon'ble Court may be pleased to dismiss the Election Petition No.7 of 2009 with cost.

**OA.No. 1073 of 2011**

This Application praying that this Hon'ble Court be pleased to dismiss the Election Petition as incurably defective at this stage itself for non compliance of mandatory requirements of Section 81(3) and Section 82 of the Representation of People Act, 1951 namely,

(1) The Election Petitioner has not filed the requisite number of copies of Election Petition and documents as required under Section 81(3) at the time of filing Election Petition.

(2) The copy of the Election Petition does not have the original signature of the Election Petitioner by way of true copy attestation.

(3) All the copies of documents served on the Applicant / First respondent were filed only on 26.10.2009 and verified on 27.10.2009, even though the Election Petition was filed on 26.06.2009. Obviously the documents are either not filed or not attested on 26.06.2009 and hence not to be treated as documents filed along with the Election petition. Consequently Election Petition was not supported by any documents.

(4) By deleting the 16<sup>th</sup> Respondent, the Election Petitioner has not arrayed all the contesting candidates as

Respondents in the Election Petition No. 7 of 2009 as required under Sec. 82 of Representation of People Act, 1951.

OA.No. 1074 of 2011

This Application praying that this Hon'ble Court be pleased to strike out the strike off the following pleadings in the Election Petition NO. 7 of 2009 viz.,

(1) The averments in Paragraph 10 and the contradictory and mutually destructive averments in Paragraph 11 read with the complaint dated 13.05.2009 are to be struck off.

(2) The averments in Para-14 of the Election Petition namely - "the Returning Officer of the No.7 Arakonam Parliamentary Constituency violated Rules 49C of the Conduct of Election Rules, 1961 by not properly displaying the petitioner's symbol "Battery Torch" in the list of candidates displaying outside the polling stations and instead displayed the symbol "Table Lamp" against the name of the petitioner thereby prevented voters to record his vote by pressing the button on the balloting unit against the symbol "Battery Torch" as in the displayed the petitioner's symbol was given as "Table Lamp". The conduct of Election Rules 1961 is the Statutory Rules made under Section 161 of the Representation of People Act, 1951. The non compliance of the Rule 49C of the Conduct of Election materially affected the result of the Election and therefore the Election of the Returned Candidate, the first respondent has to declared void"



(3) The averments in para-15 namely - "..... the change of symbol is in violation of Rule 10(5) of the Conduct of Election Rules, 1916 and materially affected the election prospects of the petitioner"

(4) The averments in Para-16 namely - "... due to change of the symbol from "Battery Torch" to "Table Lamp" the voters were misled. By the change of symbol the petitioner was materially affected and it affected the course of election and the voters were misled and wrongly voted for the first respondent"

Consequently to reject the Election Petition No.7 of 2009 as being bereft of material facts and particulars, vague, vexatious and for want of cause of action and triable issue.

The above Election Petition and applications having been heard on 24.08.2011 in the presence of Ms.A.B.Fathima Sulthana, counsel for M/s.R.N.Nithiyanandam, P.Gopalakrishnan, advocate for the Election Petitioner and for the 1<sup>st</sup> respondent in O.A.No. 1072 to 1074 of 2010 and of Mr.G.Masilamani, Senior Counsel for M/s.T.Meikandan, G.Ramadoss, advocate for the applicants in O.A.No. 1072 to 1074 of 2010 and for the 1<sup>st</sup> respondent in Election Petition and of Mr.M.R.Raghavan, Standing Counsel for the Election cases and the Respondents 2 to 15, 17 to 19 not appearing in person or by advocate and upon reading the Election Petition filed by the Election Petitioner and Judges Summons and affidavit of S.Jagathrakshakan filed in

O.A.NO.1072 to 1074 of 2010 and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocates for the parties hereto and this Court having observed that there is no pleading in the Election Petition with regard to the material facts and core issue and also how the result of the returned candidate has got materially affected, and,

**It is ordered as follows:-**

1. That the following issues be taken as the preliminary issues

(a) Whether the pleadings in the Election Petition mentioned in Paragraph 17 in this affidavit are liable to be struck off from the Election Petition.

(b) Whether the Election Petition is maintainable under Section 80 and 86 R/w. Sec 100(1)(d)(iii)&(iv) of R.P.Act for want of, cause of action, triable issue and in the absence of clear pleadings, material facts and material particulars in the Election Petition as to how the alleged wrong display of the first respondent / Election Petitioner's symbol "Battery Torch" as "Table Lamp" in the copy of the list of contesting candidates displayed outside a polling booth had materially affected the election result in so far as it concerns the returned candidate.

(c) Whether the prayer in the Election Petition to declare the Election Petitioner as the returned candidate duly elected to No.7, Arakonam Parliamentary Constituency

in the absence of pleadings with material facts and particulars to satisfy the requirement of Section 101 of Representation of People Act, 1951 is maintainable.

2. That the following pleadings in Election No.7 of 2009 be and is hereby struck off

(i) The averments in Paragraph 10 and the contradictory and mutually destructive averments in Paragraph 11 read with the complaint dated 13.05.2009 are to be struck off;

(ii) The averments in Para-14 of the Election Petition namely - "the Returning Officer of the No.7 Arakonam Parliamentary Constituency violated Rules 49C of the Conduct of Election Rules, 1961 by not properly displaying the petitioner's symbol "Battery Torch" in the list of candidates displaying outside the polling stations and instead displayed the symbol "Table Lamp" against the name of the petitioner thereby prevented voters to record his vote by pressing the button on the balloting unit against the symbol "Battery Torch" as in the displayed the petitioner's symbol was given as "Table Lamp". The conduct of Election Rules 1961 is the Statutory Rules made under Section 161 of the Representation of People Act, 1951. The non compliance of the Rule 49C of the Conduct of Election materially affected the result of the Election and therefore the Election of the Returned Candidate, the first respondent has to declared void"

(iii) The averments in para-15 namely - "..... the change of symbol is in violation of Rule 10(5) of the

Conduct of Election Rules, 1916 and materially affected the election prospects of the petitioner"

(iv) The averments in Para-16 namely - "... due to change of the symbol from "Battery Torch" to "Table Lamp" the voters were misled. By the change of symbol the petitioner was materially affected and it affected the course of election and the voters were misled and wrongly voted for the first respondent"

3. That the Election Petition No. 7 of 2009 be and is hereby dismissed as incurably defective at this stage itself for non compliance of mandatory requirements of Section 81(3) and Section 82 of the Representation of People Act, 1951.

WITNESS THE HON'BLE THIRU M.YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 20TH DAY OF SEPTEMBER 2011.

Sd/-  
ASSISTANT REGISTRAR  
Original Side - II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE 19<sup>th</sup> DAY OF Jan 2012.

*[Signature]*  
COURT OFFICER (O.S)

from 25<sup>th</sup> Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

MK - 21/10/2011

ELP. NO. 7 of 2009

AND

OA.Nos.1072 to1074 of 2011

ORDER

DATED: 20/09/2011

THE HON'BLE Ms. JUSTICE

K. SUGUNA

FOR APPROVAL: 23/12/2011

APPROVED ON: 23/12/2011

Copy to:  
Mr.M.R. Raghavan  
Standing Counsel  
(for Election cases)

5694713-4

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 20TH DAY OF SEPTEMBER 2011

THE HON'BLE Ms. JUSTICE K. SUGUNA

Election Petition No. 7 of 2009

and

A.Nos. 1072 to 1074 of 2010

**ELP. No. 7 of 2009**

S. Isaac Jebakumar

S/o. Selvadurai

No.121, Ward 3, Andersonpettai,

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... Respondents

**OA.No. 1072 of 2011**

This Application praying that this Hon'ble Court be pleased to take up the following issues as a preliminary issue viz.,

(a) Whether the pleadings in the Election Petition mentioned in Paragraph 17 in this affidavit are liable to be struck off from the Election Petition.

(b) Whether the Election Petition is maintainable under Section 80 and 86 R/w. Sec 100(1)(d)(iii)&(iv) of R.P.Act for want of, cause of action, triable issue and in the absence of clear pleadings, material facts and material particulars in the Election Petition as to how the alleged wrong display of the First Respondent / Election Petitioner's Symbol "Battery Torch" as "Table Lamp" in the copy of the list of contesting candidates displayed outside a polling booth had materially affected the election result in so far as it concerns the returned candidate.

(c) Whether the prayer in the Election Petition to declare the Election Petitioner as the returned candidate duly elected to NO.7, Arakonam Parliamentary Constituency in the absence of pleadings with material facts and particulars to satisfy the requirement of Section 101 of

**Representation of People Act, 1951 is maintainable.**

(d) In the event of the findings on all or any of the preliminary issues (a), (b) and (c) above being in the negative this Hon'ble Court may be pleased to dismiss the Election Petition No.7 of 2009 with cost.

**OA.No. 1073 of 2011**

This Application praying that this Hon'ble Court be pleased to dismiss the Election Petition as incurably defective at this stage itself for non compliance of mandatory requirements of Section 81(3) and Section 82 of the Representation of People Act, 1951 namely,

(1) The Election Petitioner has not filed the requisite number of copies of Election Petition and documents as required under Section 81(3) at the time of filing Election Petition.

(2) The copy of the Election Petition does not have the original signature of the Election Petitioner by way of true copy attestation.

(3) All the copies of documents served on the Applicant / First respondent were filed only on 26.10.2009 and verified on 27.10.2009, even though the Election Petition was filed on 26.06.2009. Obviously the documents are either not filed or not attested on 26.06.2009 and hence not to be treated as documents filed along with the Election petition. Consequently Election Petition was not supported by any documents.

(4) By deleting the 16<sup>th</sup> Respondent, the Election

Petitioner has not arrayed all the contesting candidates as Respondents in the Election Petition No.7 of 2009 as required under Sec. 82 of Representation of People Act, 1951.

**OA.No. 1074 of 2011**

This Application praying that this Hon'ble Court be pleased to strike out the strike off the following pleadings in the Election Petition NO. 7 of 2009 viz.,

(1) The averments in Paragraph 10 and the contradictory and mutually destructive averments in Paragraph 11 read with the complaint dated 13.05.2009 are to be struck off.

(2) The averments in Para-14 of the Election Petition namely - "the Returning Officer of the No.7 Arakonam Parliamentary Constituency violated Rules 49C of the Conduct of Election Rules, 1961 by not properly displaying the petitioner's symbol "Battery Torch" in the list of candidates displaying outside the polling stations and instead displayed the symbol "Table Lamp" against the name of the petitioner thereby prevented voters to record his vote by pressing the button on the balloting unit against the symbol "Battery Torch" as in the displayed the petitioner's symbol was given as "Table Lamp". The conduct of Election Rules 1961 is the Statutory Rules made under Section 161 of the Representation of People Act, 1951. The non compliance of the Rule 49C of the Conduct of Election materially affected the result of the Election and therefore the Election of the Returned Candidate, the first

respondent has to declared void"

(3) The averments in para-15 namely - "..... the change of symbol is in violation of Rule 10(5) of the Conduct of Election Rules, 1916 and materially affected the election prospects of the petitioner"

(4) The averments in Para-16 namely - "... due to change of the symbol from "Battery Torch" to "Table Lamp" the voters were misled. By the change of symbol the petitioner was materially affected and it affected the course of election and the voters were misled and wrongly voted for the first respondent"

Consequently to reject the Election Petition No.7 of 2009 as being bereft of material facts and particulars, vague, vexatious and for want of cause of action and triable issue.

The above Election Petition and applications having been heard on 24.08.2011 in the presence of Ms.A.B.Fathima Sulthana, counsel for M/s.R.N.Nithiyanandam, P.Gopalakrishnan, advocate for the Election Petitioner and for the 1<sup>st</sup> respondent in O.A.No. 1072 to 1074 of 2010 and of Mr.G.Masilamani, Senior Counsel for M/s.T.Meikandan, G.Ramadoss, advocate for the applicants in O.A.No. 1072 to 1074 of 2010 and for the 1<sup>st</sup> respondent in Election Petition and of Mr.M.R.Raghavan, Standing Counsel for the Election cases and the Respondents 2 to 15, 17 to 19 not appearing in person or by advocate and upon reading the Election Petition filed by the Election Petitioner and Judges

Summons and affidavit of S.Jagathrakshakan filed in O.A.NO.1072 to 1074 of 2010 and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocates for the parties hereto,

**This Court made the following order:-**

Election Petition No.7 of 2009 is filed by one Mr. S. Isaac Jebakumar to declare that the election of one Mr. S. Jagathrakshakan to the Lok Sabha from 7, Arakkonam Parliamentary Constituency in which result is declared on 16.06.2009, is null and void and to declare the election petitioner as a returned candidate, duly elected from 7, Arakkonam Parliamentary Constituency to the 13<sup>th</sup> Lok Sabha.

2 The first respondent in the election petition, viz., Mr.S.Jagathrakshakan, has filed three applications in O.A. Nos.1072 to 1074 of 2010.

3 As far as Original Application No.1072 of 2010 is concerned, it is filed to decide the following preliminary issues:

a Whether the pleadings in the election petition mentioned in paragraph no.17 in this affidavit are liable to be struck off from the election petition.

b Whether the election petition is maintainable under Section 80 and 86 r/w Section 100 (1)(d)(iii) and (iv) of R.P. Act for want of cause of action, triable issue and in the absence of clear pleading, material facts and material particulars in the election petition as to how the alleged wrong display of the first respondent/election petitioner's symbol "battery torch" as "table lamp" in the copy of the list of contesting candidates displayed outside a polling booth had

materially affected the election result in so far as it concerns the returned candidate,

c whether the prayer in the election petition to declare the election petitioner as the returned candidate duly elected to No. 7 Arokonam Parliamentary Constituency in the absence of pleadings with material facts and particulars to satisfy the requirement of Section 101 of Representation of People Act, 1951, is maintainable.

4 As far as Original Application No. 1073 of 2010 is concerned, it is filed with the prayer to dismiss the election petition as incurably defective at this stage itself for the non-compliance of the mandatory requirements of Section 81(3) and 82 of the Representation of the People Act, 1951 ("the Act" for short).

5 As far as Original Application No. 1074 of 2010 is concerned, it is filed to strike off the pleadings in paragraph no. 10 and paragraph no. 14 and also certain portion of paragraph no. 15 and so also paragraph no. 16 and to reject the election petition.

6 According to the learned Senior Counsel appearing for the applicant/first respondent, the election petition has been filed by the first respondent herein claiming that he was a candidate for the Lok Sabha election from No. 7, Arakkonam Parliamentary Constituency and he was allotted the symbol of "battery torch" in the said election; however, on the date of election, the symbol of "table lamp" was printed against his name in a copy of list of contesting candidates displayed outside the polling booths

and on this ground, the first respondent/election petitioner has prayed to declare the election of the successful candidate, viz., the applicant in these applications, as null and void and consequently to declare the first respondent/election petitioner as returned candidate elected from /, Arakkonam Parliamentary Constituency.

7 The learned Senior Counsel appearing for the applicant/first respondent has submitted that even assuming but without admitting that the alleged wrong printing has taken place, the first respondent/election petitioner, nowhere in his election petition, has stated as to how the alleged wrong printing of the symbol had materially affected the election of the returned candidate, viz., the applicant; based on the grounds mentioned under Section 100 of the Act which read as follows:

"100. Grounds for declaring election to be void.

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected --

i) by the improper



acceptance of any  
nomination, or

ii) by any corrupt practice  
committed in the interests  
of the returned candidate  
by an agent other than his  
election agent or

iii) by the improper  
reception, refusal or  
rejection of any vote or  
the reception of any vote  
which is void, or

iv) by any non-compliance  
with the provisions of the  
Constitution or of this Act  
or of any rules or orders  
made under this Act,

the High Court shall declare the election of the returned  
candidate to be void.

(2) If in the opinion of the High Court, a returned  
candidate has been guilty by an agent other than his  
election agent, of any corrupt practice but the High  
Court is satisfied --

a) that no such corrupt practice was  
committed at the election by the candidate or  
his election agent, and every such corrupt  
practice was committed contrary to the  
orders, and without the consent, of the  
candidate or his election agent;

c) that the candidate and his election agent  
took all reasonable means for preventing the  
commission of corrupt practices at the  
election; and

d ) that in all other respects the election  
was free from any corrupt practice on the  
part of the candidate or any of his agents,

then the High Court may decide that the election of the  
returned candidate is not void."

the High Court can declare the election of the returned  
candidate as void; but, the first respondent/election  
petitioner has not made out any reason or ground mentioned  
under Section 100 of the Act, to declare the election of  
the returned candidate, viz., the applicant, as void, i.e.,  
the result of the returned candidate has been materially  
affected by improper acceptance of nomination or by any

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corrupt practice committed in the interest of the returned candidate or by improper reception, refusal or rejection of any vote or reception of any vote which is void or by non-compliance of any provision of the Constitution of India or the provisions of the Act and rules; consequently, there is no pleading to satisfy the requirements of Section 81 and Section 100(1)(d)(iii) and (iv) of the Act; it is not the case of the first respondent/election petitioner also that in the electronic voting machines, the symbol allotted to him has been wrongly printed; on the other hand, the relief is claimed only on the ground that in the list exhibited outside the polling booth, instead of "battery torch", the symbol of "table lamp" has been printed; but, nowhere in the election petition, it has been specifically stated in which polling booth, the so called wrong symbol has been printed against the name of the first respondent/election petitioner in the list exhibited outside the polling booth; apart from this, not even material particulars such as how many voters have got confused by the so called wrong printing of symbol, have been given in the election petition; in the absence of these material particulars, especially, when the first respondent/election petitioner has not pointed out in the election petition as to how the so called wrong symbol shown in the list outside the polling booth has materially affected the result of the returned candidate, it has to be held that the first respondent/election petitioner has not made out a case to

interfere with, consequently, the election petition has to be rejected at the threshold itself as required under Section 86 of the Act; in addition to this, the list of candidates alleged to have been exhibited outside the polling booth, has not even been signed by the election officer of any booth; besides, the applicant/first respondent strongly denies the stand of the first respondent/election petitioner that a wrong symbol has been printed as against the name of the first respondent/election petitioner in the poster displayed outside the polling booths; under such circumstances, the election petition itself is devoid of merit.

8 The learned Senior Counsel appearing for the applicant/first respondent has further submitted that as per Section 82 of the Act, in the election petition, all the candidates should be arrayed as respondents; but, as far as the case in hand is concerned, though the election petition has been filed impleading 19 candidates as respondents, by endorsement dated 24.02.2010 made by the learned counsel for the election petitioner, respondent no.16 has been given up; as per Section 82 of the Act, since the word used therein is "shall", it is mandatory that when the first respondent/election petitioner claims to set aside the election of the returned candidate and to declare the first respondent/election petitioner as an elected candidate, all the candidates should be arrayed as respondents and notice should be served on them and all

possible steps to serve notice to all the candidates have to be taken; but, as far as the case in hand is concerned, without taking steps to serve notice on respondent no.16 as contemplated under Order V Rule 20 of the Civil Procedure Code, simply, an endorsement has been made and respondent no.16 has been given up; under such circumstances, it has to be held that the first respondent/election petitioner had not complied with the provisions under Section 82 of the Act; besides, as per Section 81(3) of the Act, while presenting the election petition, it should be accompanied by as many copies thereof as there are respondents, but, as far as the case in hand is concerned, on the date of filing the election petition, the copies of the respondents were not filed, i.e. the election petition was presented on 26.06.2009 and the copies of the respondents were presented on 26.10.2009, i.e., subsequent to the filing of the election petition; consequently, it has to be held that sub-section (3) of Section 81 of the Act has not been complied with.

9 It is the further submission of the learned Senior Counsel appearing for the applicant/first respondent that the applicant/first respondent has contested the election as a candidate of the DMK party, consequently, he was allotted with the symbol of "rising sun" and for more than two decades, the DMK candidates are contesting elections with the symbol of "rising sun" and in the election petition, the first respondent/election petitioner

has nowhere stated that the voters had got confused with the symbol of the "rising sun" allotted to the applicant/first respondent and so also the so called wrong symbol in the list published outside the polling booth; besides, as far as the applicant/first respondent is concerned, he had secured 4,15,041 votes, whereas, the first respondent/election petitioner has secured only 2,799 votes and it is not even the case of the first respondent/election petitioner that in the list published outside the polling booth, the symbol of the first respondent/election petitioner was shown as against the name of the returned candidate, viz., the applicant/first respondent and the symbol allotted to the first respondent/election petitioner was shown as against the name of the applicant/first respondent; under such circumstances, even the question of the voters getting confused also does not arise at all and though it is the allegation of the first respondent/election petitioner that in the list published outside the polling booth, wrong symbol was shown as against his name, but, how it materially affected the result of the returned candidate is not even whispered in the election petition; as such, as per Section 86(1) of the Act, the election petition has to be rejected.

10 The learned Senior Counsel appearing for the applicant/first respondent has further submitted that no elector had made any complaint that the electors were

confused or faced any difficulty in identifying the first respondent/election petitioner's symbol and voted in favour of the first respondent/election petitioner; in fact, the voters have correctly identified the symbol of the first respondent/election petitioner and voted for him; therefore, the alleged confusion in the minds of the voters in No.7, Arakkonam Constituency is not made out in the pleadings with material facts; the petitioner had not even named one voter who had got confused with the symbol of the "battery torch" and "table lamp"; besides, as per the election petition, the symbol shown as against the name of the first respondent/election petitioner in the list displayed outside the polling booth was "table lamp", but, as per the complaint dated 13.05.2009, the symbol shown as against his name in the list of contesting candidates displayed outside the polling booth was "bucket"; consequently, the crucial averment in the election petition and in the complaint dated 13.05.2009 are contradictory; besides, no postal acknowledgment was also produced by the first respondent/election petitioner to prove the sending of the complaint dated 13.05.2009; moreover, the complaint dated 13.05.2009 is not supported by material facts and material particulars and material facts were not pleaded in the election petition; further, the first respondent/election petitioner had not pleaded the material facts in the election petition to the effect that but for the votes obtained by the returned candidate by corrupt

practice, the first respondent/election petitioner would have obtained a majority of the valid votes; in the absence of such a specific averment as required under Section 101 of the Act, it has to be held that the relief sought is not supported by material facts, particulars, cause of action and triable issue; consequently, the consequential prayer to declare the first respondent/election petitioner as the returned candidate duly elected, should be struck off; besides, the election petition has been filed under Section 100(1)(d)(iii) and (iv) and Section 101 of the Act; under Section 100(1)(d)(iii) and (iv) an election can be set aside only if the result of the election of the returned candidate has been materially affected by improper reception, refusal or rejection of any vote or reception of any vote which is void or by non-compliance of the provisions of the Constitution of India or the Act or any rules or orders made thereunder; but, there are no pleadings of material facts in the election petition as required under Section 100(1)(d)(iii) and (iv) of the Act; further, to attract Section 100(1)(d)(iii) and (iv) of the Act, there are no pleadings with material facts and particulars; hence, the election petition does not have cause of action and triable issue; consequently, the prayer in the election petition, viz., (i), (ii) and (iii) referred to above, cannot be granted and liable to be struck off; that apart, the applicant/first respondent had secured 4,15,041 votes out of total votes of 8,53,116,

whereas, the first respondent/election petitioner had secured only 2,799 votes; hence, even assuming but without admitting that the averment in the election petition to be true, the same does not satisfy the requirement for setting aside of the election of the returned candidate, viz., the applicant/first respondent, under Section 100(1)(d)(iii) and (iv) in the absence of the pleadings with material facts and particulars as to how the first respondent/election petitioner would have secured majority of votes cast in favour of the applicant/first respondent, consequently, there is no cause of action for maintaining the election petition; based on this, the portion pertaining to the alleged confusion in the minds of the electors and wrong voting in favour of the applicant/first respondent stated in paragraph no.16 of the election petition has to be struck off and in view of this, as claimed in paragraph no.17 of Original Application No.1072 of 2010, certain portion of the election petition has to be struck off and the election petition has to be dismissed in view of incurable defect and for non-compliance of the mandatory requirements of Section 81(3) and Section 82 of the Act and so also certain portion mentioned at paragraph no.17 of Original Application No.1074 of 2010.

11. On the other hand, according to the *learned* counsel for the first respondent/election petitioner, the first respondent/election petitioner had specifically stated at paragraph no.10 that he started visiting all the



polling stations in the early morning of the polling day, i.e. on 13.05.2009; when he reached the very first polling station, he was shocked to see the "table lamp" symbol printed against his name instead of the allotted symbol of "battery torch" in the poster that was affixed outside the polling station; apart from this, there is a specific averment that the first respondent/election petitioner went around and verified each and every polling station throughout the Arakkonam Parliamentary Constituency and found that the symbol of "table lamp" was printed against his name; consequently, the argument of the learned Senior Counsel appearing for the applicant/first respondent that the first respondent/election petitioner had not given the particulars of the polling station wherein wrong symbol has been printed as against his name in the poster affixed outside the polling station is totally incorrect; apart from this, although the voters are conscious of their duties, unfortunately, a large percentage of them are still illiterate, hence, there is a need for using the symbol to denote the candidate who contest the elections so that illiterate may cast their vote in favour of the candidate of their choice by identifying him with the help of the symbol printed in the electronic voting machine against the name of the said candidate; consequently, the use of symbol is having a greater impact; since a wrong symbol was printed as against the name of the first respondent/election petitioner, it goes without saying that

It has had an impact in the election result of the first respondent/election petitioner; further, at paragraph no.15 of the election petition, it has been specifically stated that the Election Commission did not issue any direction revising the symbol allotted to the first respondent/election petitioner; therefore, the change of symbol is in violation of Rule 10(5) of the Conduct of Election Rules, 1961 and it had materially affected the election prospects of the first respondent/election petitioner; consequently, the argument of the learned Senior Counsel appearing for the applicant/first respondent that the first respondent/election petitioner had not stated that the change of symbol had materially affected his election prospects is *prima facie* incorrect and due to the change of symbol, the voters were misled and the change of symbol had affected the course of the election and the voters were misled and had wrongly voted; as far as material particulars are concerned, during trial, certainly, the first respondent/election petitioner will let in evidence with regard to the same and that apart, even at this stage also, he can file an amendment petition; consequently, this is a premature stage to dismiss the election petition. Based on these submissions, the learned counsel for the first respondent/election petitioner has sought dismissal of Application Nos.1072 - 1074 of 2010 filed in Election Petition No.7 of 2009.

12 I have considered the above submissions made by the learned Senior Counsel appearing for the applicant/first respondent and the learned counsel for the first respondent/election petitioner.

13 Firstly, it would be useful to refer to Section 82 of the Act which deals with the parties to the election petition and the same reads as follows:

"82. Parties to the petition - A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

As per the above Section, the first respondent/election petitioner has to join as respondents in the election petition, all the contested candidates in the event of claiming declaration that he himself has been duly elected. It is an admitted fact that all the contesting respondents were added as respondents in the election petition. However, respondent no.16 was given up by an endorsement dated 24.02.2010 made by the learned counsel for the first respondent/election petitioner. The stand of the learned Senior Counsel appearing for the applicant/first respondent is that as per Order V Rule 20 of the Civil Procedure Code, if an attempt had been made to effect service on respondent no.16 and in spite of that, if service could not be effected, then, on that account, if respondent no.16 is

given up, the stand of the first respondent/election petitioner that by impleading all the candidates, requirement of Section 82 of the Act has been complied with, can be accepted; but, here is a case where one N.D. Mathew has been impleaded as respondent no.16 and without taking any steps with regard to the other mode of service contemplated under the Civil Procedure Code under Order V Rule 20, by an endorsement dated 24.02.2010 made by the learned counsel for the election petitioner, respondent no.16 was given up. The object of Section 82 of the Act is that when declaration is sought by an election petitioner that he should be declared as an elected candidate, the other contesting candidates should have been provided with an opportunity. But, in the case in hand, though respondent no.16 is impleaded as a party respondent, without taking any steps as stipulated under Order 5 Rule 17 of the Civil Procedure Code, he has been given up. Consequently, as rightly pointed out by the learned Senior Counsel appearing for the applicant/first respondent, it has to be held that Section 82(a) of the Act has not been complied with.

14 Secondly, the first respondent/election petitioner seeks the relief in the election petition on the ground that wrong symbol has been printed against his name in the posters affixed outside the polling booths, i.e., instead of printing the symbol of "battery torch" against his name the symbol of "table lamp" was printed against his name.

Section 100 of the Act deals with the grounds for declaring an election petition to be void. As per sub-section (1)(d) (iv) of Section 100 of the Act, in addition to other ground, by non-compliance of the provisions of the Constitution of India or the Act or any rules made thereunder, the High Court can declare election of the returned candidate to be void. To say in other words, as per this Section, based on the ground on which the election petitioner seeks the relief, the election petitioner has to establish that in view of the wrong symbol printed against his name in the posters affixed outside the polling booths, the election of the returned candidate has been materially affected. But, as far as the case in hand is concerned, though it is stated in paragraph no.15 of the election petition that "the change of the symbol is in violation of Rule 10(5) of the Conduct of Election Rules, 1961 and materially affected the election prospects of the first petitioner" and also at paragraph no.14, though it has been stated that "the non-compliance of the Rule 49C of the Conduct of Election materially affected the result of the election", in the entire election petition, it is not stated as to how the wrong printing of the symbol against the name of the first respondent/election petitioner in the posters affixed outside the polling booths, had materially affected the election of the returned candidate. To say in other words, there is no averment in the election petition as to how or in what manner, the wrong symbol printed

against the name of the first respondent/election petitioner had an impact in the successful candidature of the applicant/first respondent. Though an argument has been advanced by the learned counsel for the first respondent/election petitioner that by letting in evidence during trial, this can be proved, there should be a pleading in the election petition in this regard i.e. as to how based on the alleged wrong, the result of the successful candidate had affected or what is the impact based on the so called wrong committed in the result of the successful candidate. When it is mandatory to aver that in the election petition, the argument of the learned counsel for the first respondent/election petitioner that the same can be established during trial, cannot be accepted. Even as per paragraph no.33 of the judgment reported in **AIR 2007 SC 581, Virender Nath Gautam vs. Satpal Singh and Others**, relied on by the learned counsel for the first respondent/election petitioner, the Hon'ble Apex Court has held as follows:

"33. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise."

and as per paragraph no.34 of the above said judgment also,

all material facts must be pleaded by the party in support of the case set up by him; since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of the pleading, a party cannot be allowed to lead evidence. It has been further held at paragraph no.34 as follows:

"... Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

But, in the case in hand, no material facts with regard to the so called wrong committed and also as to how the result of the returned candidate has been affected, has been pleaded. Consequently, it has to be held that the election petition filed by the first respondent/election petitioner had not complied with Section 83 of the Act.

15 Further, under Section 86 of the Act, the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. As far as Section 81 of the Act is concerned, it deals with the presentation of petition. As per Section 81(3) of the Act, every petition shall be accompanied by as many copies thereof as there are respondents mentioned in that election petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. But, as far as the case in hand is concerned, the election petition was presented on 26.06.2009. But, the stand of the learned

Senior Counsel appearing for the applicant/first respondent is that as far as the copies which have been served on the applicant/first respondent is concerned, the same have been filed only on 26.10.2009 and that was also not attested by the petitioner, but, it was only a photocopy of the attestation. When as per the above said Section, every such copy should be attested by the petitioner under his own signature to be true copy of the petition, filing a photocopy of the attestation will not be in compliance of sub-section of Section 81 of the Act.

16 As far as Section 82 of the Act which deals with parties to the election petition is concerned, as per the said Section, if the petitioner claims the relief of declaration that he himself has been duly elected, all the contesting candidates have to be impleaded as party respondents. In the case in hand, no doubt, all the contesting candidates were impleaded as party respondents. But, as far as respondent no.16, viz., N.D. Mathew is concerned, by a mere endorsement dated 24.02.2010 made by the learned counsel for the election petitioner, he was given up and the reason attributed is that service to the said N.D. Mathew could not be completed. But, as rightly pointed out by the learned Senior Counsel appearing for the applicant/first respondent, without taking any steps for other modes of service as prescribed under Order V Rule 20 of the Civil Procedure Code, the learned counsel for The first respondent/election petitioner had made an



endorsement to the effect that respondent no.16 is given up. When as per Section 82 of the Act, all the contesting respondents should be arrayed as parties to the election petition, after impleading them, without taking steps to effect service of notice on respondent no.16 as prescribed under Order V Rule 20 of the Civil Procedure Code, the learned counsel for the first respondent/election petitioner has made an endorsement dated 24.02.2010, giving up respondent no.16. Under such circumstances, it has to be held that the election petition has not been filed in accordance with Section 82 of the Act.

17 Besides, as rightly argued by the learned Senior Counsel appearing for the applicant/first respondent, in the election petition, the first respondent/election petitioner had not averred as to how he would have secured majority of the votes cast in favour of the elected candidate, viz., the applicant/first respondent. Apart from this, relying on the poster alleged to have been exhibited outside the polling booth wherein the symbol of the first respondent/election petitioner has been wrongly printed, this election petition is filed. Admittedly, as pointed out by the learned Senior Counsel appearing for the applicant/first respondent, as far as this allegation is concerned, material particulars relating to this issue have not been averred, that is to say, whether the said poster published outside the polling booth is a list published by the election authorities or by whom. That apart, as per the

complaint dated 13.05.2009, the wrong symbol printed was "bucket". But, as per the averment in the election petition, the wrong symbol printed was "table lamp". As rightly pointed out by the learned Senior Counsel appearing for the applicant/first respondent, even with regard to the basic aspect based on which this election petition is filed, there is a contradictory statement made by the first respondent/election petitioner, that is to say, it has been stated as "bucket" in the complaint dated 13.05.2009 and in the election petition, it has been stated as "table lamp" and also there is no pleading at all in the election petition giving particulars of the voters who got actually confused based on this so called alleged wrong printing of the symbol and not even name of one voter has been mentioned. Above all, as rightly pointed out by the learned Senior Counsel appearing for the applicant/first respondent, based on this alleged wrong symbol printed in the poster which was exhibited outside the polling booth, how the result of the elected candidate, viz., the applicant/first respondent, has got affected, is not averred in the election petition and there is no pleading with reference to this. Unless there is a pleading to the effect that by the alleged wrong printing of the symbol, the returned candidate had a gainful voting, the question of declaring the petitioner as an elected candidate will not arise. Of course, based on the pleading, at the time of trial, the first respondent/election petitioner can let in

evidence. But, when there is no pleading at all with regard to the material facts and particulars as to how based on the alleged wrong printing of symbol, the election of the returned candidate has got affected, it has to be held that no cause of action has been made out in the pleadings. Even as per the stand of the first respondent/election petitioner also, in the electronic voting machine, the symbol of the first respondent/election petitioner has been correctly shown.

18 Besides, even as per the judgment reported in 1986 (Supp) SCC 315, *Azhar Hussain vs. Rajiv Gandhi*, relied on by the learned Senior Counsel appearing for the applicant/first respondent, it has been held as follows:

"5. Learned counsel for the appellant has urged four submissions in support of this appeal viz:

"D. Even if the powers under the Code of Civil Procedure can be exercised by the court hearing election petitions worse comes to worst, an election petition may be rejected under Order 7, Rule 11 of the Code of Civil Procedure, but in no case it be dismissed."

7. The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117 and not Section 83.

9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

10. There is thus no substance in this point which is already concluded against the appellant in *Hardwar Lal v. Kanwal Singh* wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were

not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)

" . . . The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

. . . Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed. . . . All the facts which are essential to clothe the petitioner with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

12. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. . . . The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. . . . The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

14(1) *What are material facts and particulars?* Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded

in the petition.

18. . . . It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these "essential facts" which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in Manubhai Nandlal Amorsey vs. Popatlal Manilal Joshi it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance of Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petitioner would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this conclusion. . . . Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhai Nandlal case, as also Hardwari Lal case is satisfied. The High Court was therefore justified in taking the view that it has taken. . It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not be of any consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so."

As per the above said judgment also, the Legislature wanted to provide for summary dismissal of an election petition, i.e., even in the event of failure to comply with the

requirement of Section 81, 82 and 117 of the Act, election petition can be summarily rejected. The object of the same is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. Consequently, all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to non-compliance of Section 83(1)(a) of the Act. As far as the case in hand is concerned, as referred to earlier, the material facts and particulars with regard to the core issue, i.e. with regard to the alleged printing of the wrong symbol in the posters exhibited outside the polling station and besides, how the so called alleged wrong symbol had materially affected the election result of the returned candidate/the applicant herein are not averred even with bare particulars. Consequently, the argument of the learned Senior Counsel appearing for the applicant/first respondent has to be accepted.

19 In support of the above contention, the learned Senior Counsel appearing for the applicant/first respondent has placed further reliance on the judgment reported in (1972) 1 SCC 214, *Hardwari Lal vs. Kanwal Singh* wherein it has been held that even omission of a single material fact leads to an incomplete cause of action and the statement of claim consequently becomes bad. But, as far as the case in hand is concerned, no material particulars with regard to

the alleged wrong has been averred in the election petition. That apart, even in the judgment reported in (2009) 10 SCC 541, Ram Sukh vs. Dinesh Aggarwal, at paragraph no.21, it has been held as follows:

"We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:

"100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."

It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."

But, in the case in hand, as referred to earlier, there is no pleading as to how the alleged printing of a wrong symbol as against the name of the election petitioner in the poster pasted outside the polling station had materially affected the result of the returned candidate. As such, it has to be held that the pleading is vague and does not spell out as to how the election results have been materially affected because of the alleged wrong printing of the symbol.

20 Yet another factor to be noted is that even as per

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the pleadings at paragraph no.10 of the election petition, alleged wrong printing of the symbol is only in a poster. Though a stand has been taken at paragraph no.14 of the election petition that the Returning Officer of the Arakkonam Parliamentary Constituency had violated Rule 49C of the Election Rules by not properly displaying the symbol of the election petitioner, viz., battery torch, in the list of candidates displayed outside the polling station, the list of contesting candidates filed along with the election petition does not contain the signature of the Election officials to show that the said copy of the list of contesting candidates was issued by Election officials. Apart from this, it is not the case of the first respondent/election petitioner also that by wrong printing of the symbols, there was an exchange of symbol between the first respondent/election petitioner and the returned candidate, that is to say, the symbol of the returned candidate was wrongly shown as the symbol of the first respondent/election petitioner and the symbol of the first respondent/election petitioner was shown as against the name of the returned candidate. As such, the voters have voted to the returned candidate fully realising to whom they are casting their vote and the returned candidate has secured 4,15,041 votes and the first respondent/election petitioner has secured only 2,799 votes.

21 As far as the judgment reported in (2005) 13 SCC 511, **Harkirat Singh vs. Amrinder Singh** relied on by the learned counsel for the first respondent/election petitioner is concerned, even as per paragraph no.82 of the



said judgment, the material facts of corrupt practice allegedly adopted by the respondent had been set out in the election petition with full particulars. Consequently, the Hon'ble Apex Court had taken a view that High Court ought not to have summarily rejected the case. But, as far as the case in hand is concerned, there is no pleading in the election petition with regard to the material facts and core issue and also how the result of the returned candidate has got materially affected. Consequently, this judgment will not be of any assistance to the first respondent/election petitioner.

In view of the reasoning discussed above, O.A. Nos.1072 to 1074 of 2010 in Election Petition No.7 of 2009 are allowed. Consequently, Election Petition No.7 of 2009 is dismissed. No costs.

WITNESS THE HON'BLE THIRU M.YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 20TH DAY OF SEPTEMBER 2011.

Sd/-  
ASSISTANT REGISTRAR  
Original Side - II

THE HON'BLE Ms. JUSTICE  
K. SUGUNA

[No. 82/TN-HP/7/2009/2013]

By Order,  
R. K. SRIVASTAVA, Principal Secy.